

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
AMENDMENTS TO 35 ILL. ADM. CODE)	R22-17
PART 203: MAJOR STATIONARY SOURCES)	(Rulemaking – Air)
CONSTRUCTION AND MODIFICATION,)	
35 ILL. ADM. CODE PART 204: PREVENTION)	
OF SIGNIFICANT DETERIORATION, AND)	
PART 232: TOXIC AIR CONTAMINANTS)	

NOTICE OF FILING

TO: Mr. Don A. Brown, Clerk of the Board Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 (VIA ELECTRONIC MAIL)	Mr. Daniel Pauley Hearing Officer Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 (VIA ELECTRONIC MAIL)
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(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **ILLINOIS ENVIRONMENTAL REGULATORY GROUP’S MOTION FOR LEAVE TO FILE, INSTANTER, ITS REPLY TO THE AGO’S OBJECTION TO IERG’S MOTION FOR LEAVE**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: September 6, 2024

By: /s/ Melissa S. Brown

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CERTIFICATE OF SERVICE

I, Melissa S. Brown, the undersigned, hereby certify that I have served the attached **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S MOTION FOR LEAVE TO FILE, INSTANTER, ITS REPLY TO THE AGO'S OBJECTION TO IERG'S MOTION FOR LEAVE**, on September 6, 2024, to the following:

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That my email address is Melissa.Brown@heplerbroom.com

That the number of pages in the email transmission is 9.

That the email transmission took place before 5:00 p.m. on the date of September 6, 2024.

Date: September 6, 2024

/s/ Melissa S. Brown
Melissa S. Brown

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDMENTS TO 35 ILL. ADM. CODE) R 22-17
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CONSTRUCTION AND MODIFICATION,)
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PART 232: TOXIC AIR CONTAMINANTS)

**IERG’S MOTION FOR LEAVE TO FILE, INSTANTER, ITS REPLY
TO THE AGO’S OBJECTION TO IERG’S MOTION FOR LEAVE**

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, pursuant to Sections 101.500(e) and 102.108 of the Illinois Pollution Control Board’s (“Board”) regulations, 35 Ill. Adm. Code 101.500(e) and 102.108, respectfully requests leave to file, instanter, its Reply to the Illinois Office of the Attorney General’s (“AGO”) Objection to IERG’s Motion for Leave to File, Instanter, its Response to the Illinois Environmental Protection Agency’s (“Agency” or “Illinois EPA”) First Notice Comment. In support of this Motion for Leave, IERG states as follows:

1. On August 9, 2024, IERG filed a Motion for Leave to File, Instanter, its Response to the Agency’s First Notice Comment to request permission to file a response in order to address a new argument made by Illinois EPA.
2. On August 23, 2024, the AGO filed an objection/response to IERG’s Motion for Leave. *See* AGO’s Objection to IERG’s Motion for Leave to File, Instanter, Its Objection to the Agency’s First Notice Comment, PCB R 22-17 (Aug. 23, 2024) (hereinafter “Response”).
3. Section 101.500(e) of the Board’s rules provides that “[t]he moving person will not have the right to reply, except as the Board or the hearing officer permits to prevent material prejudice. A motion for permission to file a reply must be filed with the Board within 14 days after

service of the response.” 35 Ill. Adm. Code 101.500(e). This Motion for Leave is filed within 14 days of service of the AGO’s Response filed on August 23, 2024.¹

4. IERG requests leave to file a Reply to the AGO’s Response in order to respond to the arguments made in the AGO’s Response and, specifically, to refute the AGO’s arguments that IERG’s Motion for Leave was untimely, did not provide useful information, and was repetitive. IERG would be materially prejudiced if leave is not granted to file a Reply. IERG should be afforded the opportunity to refute the arguments by the AGO and IERG’s Reply will provide additional context for the Board’s consideration when ruling on IERG’s Motion for Leave. IERG does not seek leave for purposes of undue delay and granting leave would not prejudice any other participant involved in this rulemaking.

5. IERG’s Reply to the AGO’s Response is attached hereto as Attachment 1.

WHEREFORE, for the above and foregoing reasons, the Illinois Environmental Regulatory Group respectfully requests that the Board grant its Motion for Leave to File, Instantly, Its Reply to AGO’s Objection to IERG’s Motion for Leave to File, Instantly, its Response to the Agency’s First Notice Comment, and accept the attached Reply as filed on this date.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: September 6, 2024

By: /s/ Melissa S. Brown
One of Its Attorneys

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¹ IERG acknowledges that the Clerk has docketed both IERG’s August 9th Motion for Leave and the AGO’s August 23rd Response as public comments in this rulemaking. *See* P.C. #23 and P.C. #24, respectively. However, out of an abundance of caution, IERG is proceeding with filing a Motion for Leave within the 14-day timeframe pursuant to 35 Ill. Adm. Code 101.500(e).

ATTACHMENT 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDMENTS TO 35 ILL. ADM. CODE) R 22-17
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PART 232: TOXIC AIR CONTAMINANTS)

IERG’S REPLY TO THE AGO’S OBJECTION TO IERG’S MOTION FOR LEAVE TO FILE, INSTANTER, ITS RESPONSE TO AGENCY’S FIRST NOTICE COMMENT

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, pursuant to Sections 101.500(e) and 102.108 of the Illinois Pollution Control Board’s (“Board”) regulations, 35 Ill. Adm. Code 101.500(e) and 102.108, respectfully submits its Reply to the Illinois Office of the Attorney General’s (“AGO”) Objection to IERG’s Motion for Leave to File, Instanter, its Response to the Illinois Environmental Protection Agency’s (“Agency” or “Illinois EPA”) First Notice Comment. In support of this Reply, IERG states as follows:

On April 18, 2024, the Board issued an Order proposing for First Notice the proposed amendments to 35 Ill. Adm. Code Parts 201, 202, 203, 204, and 232. First Notice Opinion and Order of the Board, PCB R 22-17 (Apr. 18, 2024). The Board’s Opinion and Order indicated that first-notice publication in the Illinois Register would start a period of at least 45 days for filing public comments. First Notice Opinion and Order at 78. The First Notice version of the proposed rules was published in the Illinois Register on May 3, 2024. 48 Ill. Reg. 6330, 6554. The Illinois Register stated that “[t]he Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the Illinois Register.” 48 Ill. Reg. 6554 (May 3,

2024). Forty-five days from May 3, 2024 (the date of publication in the Illinois Register) was June 17, 2024. IERG, Illinois EPA, and the AGO filed comments with the Board on June 17, 2024.

On August 9, 2024, IERG filed a Motion for Leave to File, Instanter, its Response to the Agency's First Notice Comment for the reasons discussed in the August 9th Motion for Leave. IERG's Motion for Leave was timely filed on August 9th. There are no Board procedural rules explicitly governing the timing of filing a response to a comment or a motion for leave to respond to a comment in general rulemakings. *See* 35 Ill. Adm. Code 102.108; *see generally* 35 Ill. Adm. Code Parts 101 and 102. Section 101.500(d) of the Board's procedural regulations provides a 14-day deadline to file a response to a motion; however, Section 101.500 does not address public comments. 35 Ill. Adm. Code 101.500. Given that there is no Board procedural rule explicitly addressing the timing of filing a response to a public comment, or when to file a motion for leave to file a response to a public comment, IERG's August 9th Motion for Leave should be considered timely filed.

Furthermore, this rulemaking is still within the First Notice period when public comments can be accepted. Section 102.108 of the Board's regulations governs public comments filed in regulatory and informational hearings and proceedings. 35 Ill. Adm. Code 102.108. Section 102.108 provides, in part, that "[t]he Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604." 35 Ill. Adm. Code 102.108(a). The First Notice period is defined in Section 102.604 as a period of "at least 45 days, and will begin on the day that first notice is published in the Illinois Register." *Id.* at 102.604. As explained above, per the date of First Notice publication in the Illinois Register, the First Notice comment period in this rulemaking is for a period through *at least* June 17, 2024. Because the Board has not yet moved the proposed amendments to Second Notice, this rulemaking

is still in the First Notice period. Instead of directly filing an additional public comment, which would include arguments in response to Illinois EPA's comment, IERG proceeded with requesting leave to file a response given that it was unknown when the Board would be moving to Second Notice in this rulemaking. Given this rulemaking is still in the First Notice period, IERG's Response to the Agency's First Notice Comment is timely and should be considered by the Board.

Lastly, IERG maintains that its Response, attached to its Motion for Leave, provides useful information for the Board's consideration in this rulemaking. IERG discussed the fact that, while Illinois has the authority to adopt state regulations that are more stringent than the federal regulations, it will not be clear how stringent the federal amendments¹ will be, or what the federal amendments will consist of, until they are finalized. *See* IERG's Response at 4, Attachment 1 to IERG's Motion for Leave, PCB R 22-17 (Aug. 9 2024). While the Agency had already argued in its First Notice Comment that Illinois has the authority to adopt more stringent regulations, IERG was providing argument and context for the Board's consideration about why incorporating language similar to the federally proposed regulations ahead of their adoption would not be prudent here. *See id.* IERG pointed to the comments filed in USEPA's rulemaking that opposed, expressed concerns, sought clarification, proposed revisions, and/or responded to the request for comment on specific issues to highlight the potential for USEPA to revise the proposed rule language when finalizing the amendments. IERG's Response provided useful context for the Board's consideration in deciding how to move forward in this rulemaking.

¹ *New Source Review regulations. Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting*, 89 Fed. Reg. 36870 (May 3, 2024).

WHEREFORE, for the above and foregoing reasons, IERG respectfully requests that the Board grant its Motion for Leave to File, Instantly, Its Response to the Agency's First Notice Comment, filed on August 9, 2024.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: September 6, 2024

By: /s/ Melissa S. Brown
One of Its Attorneys

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